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MARCH, NINETEEN HUNDRED AND FOURTEEN.

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## NOTES.

CRIMINAL LIABILITY OF CORPORATIONS.—An instance of the recent origin of some of the most fundamental conceptions of corporation law is afforded by the question to what extent corporations are subject to indictment and conviction for crime. Although there are few early decisions on the point, early dicta point to the conclusion that corporations are not indictable, at least in the absence of express statutory provisions.<sup>1</sup> To-day there is a wide and ap-

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<sup>1</sup>State v. Great Works Co. (1841) 20 Me. 41; McKim v. Odom (Md. 1828) 3 Bland, Ch. 407, 421; McDaniel v. Gate City Gas Light Co. (1887) 79 Ga. 58. Where criminal statutes are couched in general language, it seems to depend upon the disposition of the interpreting court whether corporations will be included or not. In Commonwealth v. Graustein Co. (1911) 209 Mass. 38; Overland Cotton Mill Co. v. People (1904) 32 Colo. 263; Rose v. State (1908) 4 Ga. App. 588; and State v. Creamery Co. (1910) 83 Kan. 389, the corporation was held liable; *contra*, State v. Ohio

parently increasing field of crimes for which corporations may be punished.<sup>2</sup>

The reasons usually given for partial or total non-liability are: (1) that since a corporation is authorized to perform only legal acts, any crimes committed in its name are *ultra vires* and non-corporate, the only responsible parties being the individuals who instigated or participated in the criminal act; (2) that criminal procedure is inapplicable to corporations; (3) that a corporation is incapable of criminal intent; and (4) that from their very nature certain crimes cannot be committed by corporations.

The first argument goes to the basis, not only of all criminal liability of corporations, but of all civil liability as well. If an offense against the criminal law is necessarily non-corporate, so, it would seem to follow, is an act which invades only individual rights. This doctrine had the effect in a few early cases of limiting corporate liability to non-feasance;<sup>3</sup> while it is, perhaps, logically defensible, its effects are so far-reaching, and the immunity afforded the corporations so complete, that it is practically everywhere repudiated as regards torts,<sup>4</sup> contracts,<sup>5</sup> and crimes.<sup>6</sup>

The second argument may have some weight where the statutory procedure contains no method of compelling a corporation to submit to the jurisdiction of the criminal courts.<sup>7</sup> But even in such cases it might be waived by a general appearance;<sup>8</sup> and where there is no such statutory objection the courts have readily devised appropriate means of obtaining jurisdiction.<sup>9</sup> And while a corporation cannot be imprisoned, it may be fined; so that unless the only punishment prescribed for the crime in question is imprisonment or death, the method of punishment affords no difficulty.<sup>10</sup>

The argument that a corporation is incapable of criminal intent is more formidable. Conceding that in civil cases the intent of the representatives of a corporation is imputable to it, it by no means

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& Miss. R. R. (1864) 23 Ind. 362. It is interesting to note that provisions of statutory construction acts that "person" includes "corporation" are practically without effect in such cases; for these general provisions are readily held inapplicable where the court deems their application contrary to legal principle. See *State v. Ohio & Miss. R. R.*, *supra*; *People v. Rochester Ry.* (1909) 195 N. Y. 102.

<sup>2</sup>1 Bishop, *New Criminal Law* (8th ed.) §§ 417-424.

<sup>3</sup>*State v. Ohio & Miss. R. R.*, *supra*; *State v. Great Works Co.*, *supra*.

<sup>4</sup>2 Morawetz, *Private Corporations* (2nd ed.) §§ 725-731.

<sup>5</sup>*Ibid.*, §§ 648-650, 700-706.

<sup>6</sup>See *People v. Woodbury Dermatological Inst.* (1908) 192 N. Y. 454; *Commonwealth v. Pulaski Co. Agr. Assn.* (1891) 92 Ky. 197; *Commonwealth v. Props. of New Bedford Bridge* (Mass. 1854) 2 Gray 339; *State v. Morris & Essex R. R.* (1852) 23 N. J. L. 360.

<sup>7</sup>See *People v. Equitable Gas Light Co.* (1888) 5 N. Y. Supp. 19. The Code of Criminal Procedure now provides for such cases. §§ 675-682.

<sup>8</sup>See *Southern Ry. v. State* (1906) 125 Ga. 287.

<sup>9</sup>*John Gund Brewing Co. v. United States* (C. C. A. 1913) 204 Fed. 17.

<sup>10</sup>See *United States v. Van Schaick* (C. C. 1904) 134 Fed. 592; *State v. Atchison* (Tenn. 1879) 3 Lea 729; *Commonwealth v. Pulaski Co. Agr. Assn.*, *supra*. The difference between the punishments to which individuals and corporations are thereby subjected does not violate the equal protection of the laws. *American Fork City v. Charlier* (Utah 1913) 134 Pac. 739.

follows that the rule is the same in the case of crimes. An individual is liable for the tortious acts of his agent within the general scope of his employment, though intent be an essential element of the tort.<sup>11</sup> But to charge him with the agent's crimes he must be shown to have authorized the act and shared in the intent.<sup>12</sup> Accordingly, it is held in some jurisdictions that corporations are liable only for crimes not involving *mens rea*.<sup>13</sup> The contrary view, however, is undoubtedly the prevailing one to-day;<sup>14</sup> and it is certainly justifiable on grounds of policy if not also on those of logic.

It is very generally assumed that even if the foregoing objections are overcome, still there are certain crimes so far outside the scope of corporate powers that corporations cannot be convicted of them.<sup>15</sup> It is difficult to see any reason for such a distinction, or any satisfactory manner of defining it; and it is interesting to note that although corporations have been held liable for a criminal contempt of court,<sup>16</sup> conspiracy,<sup>17</sup> and various statutory crimes of intent,<sup>18</sup> no decision has been found in which the defendant was freed squarely upon the ground that the crime is completely without the scope of corporate powers.<sup>19</sup> The recent case of *People v. Tyson & Co.* (N. Y. City Mag. Ct. 1914) N. Y. L. J. Jan. 13, 1914, in which a corporation was held for trial on charge of grand larceny, seems correct upon principle, and in line with the weight of modern authority.

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EQUITABLE PROTECTION OF POLITICAL RIGHTS.—From the language of the cases and the text-writers nothing appears to be more definitely settled than that equity has no jurisdiction over political matters; and that, despite inadequacy of remedy at law or the threat of irreparable

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<sup>11</sup>Burdick, Torts, (2nd ed.) 153.

<sup>12</sup>1 Bishop, New Criminal Law (8th ed.) §§ 640-643.

<sup>13</sup>Androscoggin Water Power Co. v. Bethel Steam Mill Co. (1874) 64 Me. 441; see Delaware Div. Co. v. Commonwealth (1869) 60 Pa. 367, appeal dismissed (1890) 136 U. S. 634; Commonwealth v. Props. of New Bedford Bridge, *supra*; Commonwealth v. Pulaski Co. Agr. Assn., *supra*.

<sup>14</sup>See cases cited in notes 16, 17 and 18.

<sup>15</sup>Bishop, whose discussion of this question seems to be the basis of many of the modern decisions, takes this view. 1 Bishop, New Criminal Law (8th ed.) §§ 417, 422, 423. See also New York Central & H. R. R. v. United States (1909) 212 U. S. 481.

<sup>16</sup>United States v. Memphis & Little Rock R. R. (C. C. 1881) 6 Fed. 237; Telegram Newspaper Co. v. Commonwealth (1899) 172 Mass. 294; Franklin Union v. People (1906) 220 Ill. 355, 370; City of New York v. S. I. Ferry Co. (1876) 64 N. Y. 622.

<sup>17</sup>State v. Eastern Coal Co. (1908) 29 R. I. 254, 265.

<sup>18</sup>(Knowingly mailing unmailable matter) United States v. New York Herald Co. (C. C. 1907) 159 Fed. 206; (Eight hour labor law) United States v. John Kelso Co. (D. C. 1898) 86 Fed. 304; (Wilful mischief by tenant) State v. Rowland Lumber Co. (1910) 153 N. C. 610; (Sabbath-breaking) State v. B. & O. R. R. (1879) 15 W. Va. 362.

<sup>19</sup>The cases of *People v. Rochester Ry.*, *supra* and *Commonwealth v. Illinois Central R. R.* (1913) 152 Ky. 320, holding that a corporation cannot be guilty of homicide, are based upon a literal interpretation of the statutory and common law definitions of homicide. A similar holding in *Commonwealth v. Punxsutawney St. Ry.* (1900) 24 Pa. Co. Ct. Rep. 25, was reached on the mere ground of lack of direct precedent.